RECENT IMPORTANT DECISIONS.

APPEAL AND ERROR—ATTORNEY'S INTEREST IN CASE ON APPEAL—CONTINGENT FEE.—Certain attorneys on agreement for a contingent fee of fifty per cent (which agreement is denied by the client) prosecuted to judgment a suit on behalf of their client against the plaintiff's mother-in-law, for the alienation of the affections of the plaintiff's husband. Judgment was ordered on a verdict for $30,000 for the plaintiff and the defendant appealed. Pending the appeal, the plaintiff and her husband became reconciled. To protect their interests the above attorneys filed a bill in chancery alleging "that this reconciliation was brought about by collusion, for the purpose * * * of defrauding the attorneys of their interest" in the judgment and obtained an injunction forbidding the parties to the original suit from making "any settlement or compromise of the above judgment which would affect adversely the interest of the attorneys." Whereupon, the plaintiff in the original suit, "filed in her name what purports to be a 'confession of error,' asking that the judgment in the original suit and from which appeal is now pending, be reversed and set aside "for manifest errors in said record." The attorneys then moved for leave to appear and represent their interest in the original judgment and to have the above consent for reversal set aside. *Held,* that the said attorneys be allowed to appear as attorneys for themselves and argue the merits of the appealed case, as "it is at least probable that they have an equitable interest in this suit," which would otherwise be destroyed or prejudiced. *Sivley* v *Sivley* (1909),—Miss —, 50 South, 552

The decision in this case rests entirely on the propositions that any disposition of an appealed case cannot be made without the consent of the court and that the attorneys under the agreement for a contingent fee have secured an equitable interest in the judgment. The court cites no cases in its brief opinion. However it has been held that "where a client agrees that his attorney, who prosecutes his action, shall have a certain part of the recovery for his services in prosecuting the action, and the attorney performs the service and procures a judgment, he is to be regarded as an equitable assignee of the part of the judgment obtained." 4 CYC., 49; *Schubert* v. *Herzberg,* 65 Mo. App. 578; *Terney* v. *Wilson,* 45 N. J. L. 282; *Holmes* v. *Evans,* 129 N. Y. 140; *Patten* v. *Wilson,* 34 Pa. St. 299; *Cain* v. *Hockensmith etc. Co.,* 157 Fed. 992; *Harris* v. *Hazlehurst Oil Mill etc. Co.,* 78 Miss. 603; Weeks, "ATTORNEYS AT LAW," § 355. *Sivley* v. *Sivley,* supra, affords interesting aspects of the "contingent fee" agreement between attorney and client. Such agreements present troublesome questions of public policy.

BANKRUPTCY—DISCHARGE—SUBSEQUENT ACTION FOR FRAUD.—Plaintiff commenced an action against defendant for goods had and received, but prior to the determination of the suit defendant was adjudged a bankrupt. Plaintiff then presented his claim and received a dividend pro rata with the

other creditors. Later he sued for the balance of his claim on the ground that his demand was one arising out of the defendant's fraud, and therefore not dischargeable under Bankruptcy Act July 1, 1898, c. 541, § 17 (4), 30 Stat. 550 (U. S. Comp. St. 1901, p. 3428). The bankrupt insisted that by presenting his claim in the bankruptcy court and accepting the dividends declared by it, plaintiff had waived the fraudulent character of the demand. *Held,* that presenting one's claim against a bankrupt's estate is not a waiver of the defendant's fraud, and not inconsistent with a right in the plaintiff to bring a subsequent action for fraud. *Standard Sewing Machine Co.* v. *Kattell* (1909), 117 N. Y. Supp. 32.

It seems difficult to distinguish the facts in this case from those in *Standard Varnish Works* v. *Haydock,* 143 Fed. 318, in which the plaintiff corporation had participated in a regular creditors' meeting and presented its claim against the bankrupt's estate, afterwards asking leave to withdraw its claim on the ground that its demand was not one dischargeable in bankruptcy within the section cited supra. It was held that by presenting its claim and participating in the creditors' meeting, plaintiff had waived the fraudulent character of the demand and was bound by its election. Obviously, a plaintiff ought not to be allowed to take part in creditors' meetings and influence the action of other creditors if his own claim is not to be affected thereby. Such a course is no less than fraud upon the other creditors. While affirming a sale and suing for damages for fraud in its inducement may not be so inconsistent as to prevent a joinder of such counts in a plaintiff's declaration, to prevent a variance between the allegations and the proof, (*Glover* v. *Radford,* 120 Mich. 542, 79 N. W. 803,) it would seem that they are so far inconsistent that having recovered upon one, as in the principal case, the plaintiff ought not to be allowed to bring a subsequent action upon the other. Such a course would also lead to embarrassing questions as to "splitting a cause of action" for "claims arising out of the same transaction," within the usual code provisions as to joinder of causes of action.

Bills and Notes—Usury No Defense Against a Bona Fide Holder—Construction Of Negotiable Instruments Statute—Plaintiffs who are holders in due course bring suit to recover the amount of a note. Defendants offer sufficient evidence to prove that there was usurious interest taken at the inception of the note. *Held* (Lehman, J., dissenting), that under the negotiable instruments statute (Laws of 1897 C. 612 ç 96), the defense of usury is not available against a bona fide holder of a note. *Klar et al.* v. *Kostiuk et al.* (1909,) 119 N. Y. Supp. 683.

This case is very near the border line and the opinion of the majority as to the precise point involved is not altogether sustained by the decisions of the New York courts. *Schlesinger* v. *Gilhooly,* 189 N. Y. 1, relied upon by Gildersleeve, P. J. who delivered the opinion of the court, was decided by a divided court and the exact question, presented in the principal case, was not passed upon. Seabury J. concurred in so far as the opinion holds that it was the purpose of the legislature in enacting § 96 of the Negotiable Instruments Law to make a radical change in the law of the state affecting ne-